

FILED

DISTRICT COURT OF GUAM

JAN 26 2007

MARY L.M. MORAN
CLERK OF COURT

BERMAN O'CONNOR & MANN
Suite 503 Bank of Guam Bldg.
111 Chalan Santo Papa
Hagatna, Guam 96932
Telephone: (671) 477-2778

Mark S. Smith, Esq.
THE LAW OFFICES OF MARK S. SMITH
456 West O'Brien Drive, Suite 102-D
Hagatna, Guam 96910
Telephone: (671) 477-6631

Attorneys for Defendant:
WEN YUEH LU

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WEN YUEH LU,

Defendant.

MAGISTRATE CASE NO. 06-00031

**DEFENDANT'S MOTION AND
MEMORANDUM TO ENTER PLEA OF
NOLO CONTENDERE**

I. MOTION

Defendant Wen Yueh Lu hereby moves to enter a plea of Nolo Contendere pursuant to Fed.R.Crim.Pro. Rule 43(b)(2) and Fed.R.Crim.Pro. Rule 11(a)(1).

II. PRELIMINARY STATEMENT

This memorandum is submitted by Defendant Wen Yueh Lu in support of his motion to enter a nolo contendere plea pursuant to Federal Rule of Criminal Procedure Rule 43(b)(2) and Federal Rule of Criminal Procedure Rule 11(a)(1).

ORIGINAL

4 **III. ARGUMENT**

5 On December 8, 2006, this case initiated with the filing of a magistrate's complaint
6 against Defendant Wen Yueh Lu ["Defendant"]. Defendant plead not guilty to the charge
7 in that magistrate's complaint.

8 On January 16, 2007, Defendant executed a consent and waiver consenting to the
9 court proceeding in Defendant's absence and waiving the right of Defendant to appear in
10 person for Defendant's trial and sentencing, if applicable, pursuant to Federal Rule of
11 Criminal Procedure Rule 43(b)(2).

12 The court subsequently granted leave for this proceeding to go forward in
13 Defendant's absence and Defendant left Guam to return to Taiwan.

14 Defendant now seeks to enter a plea of nolo contendere pursuant to Federal Rule
15 of Criminal Procedure Rule 11(a)(1). Defendant is not available to formally sign a consent
16 to enter that nolo contendere plea but has consented to legal counsel's representation to the
17 court of his willingness to consent to a nolo contendere plea.

18 Courts may accept a plea of nolo contendere over the objection of government
19 counsel. U.S. v. Baltimore & Ohio R.R., 543 F.2d 821, 823 and 823 n.4 [D.D.C. 1982]
20 [permitting nolo contendere pleas over objection of government counsel and stating that
21 statistics "belie the government's argument that exercise of the court's discretion should
22 be reserved for exceptional circumstances"]. Compare U.S. v. Jones, 119 F.Supp. 288, 290
23 [S.D.Cal.1954] [nolo contendere plea should be accepted in the absence of a compelling
24 reason to the contrary]. In this case, there are no compelling reasons that Defendant should
25 not be permitted to enter a plea of nolo contendere, and Defendant requests that the court
26 exercise its discretion to permit Defendant to enter a nolo contendere plea.

4 **IV. CONCLUSION**

5 Defendant requests that the motion to enter a nolo contendere plea be granted
6 pursuant to Federal Rule of Criminal Procedure Rule 43(b)(2) and Federal Rule of Criminal
7 Procedure Rule 11(a)(1).

8 Dated this 26th day of January, 2007.

9 Respectfully submitted,

10 Attorneys for Petitioner/Defendant:
11 WEN YUEH LU

12 **BERMAN O'CONNOR & MANN**
13 **THE LAW OFFICES OF MARK S. SMITH**

14 By: 

15 **DANIEL BERMAN**
16 **MARK S. SMITH**